



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XB048]

#### **Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the U.S. Coast Guard's Alaska Facility Maintenance and Repair Activities**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; receipt of application for Letter of Authorization; request for comments and information.

**SUMMARY:** NMFS has received a request from the U.S. Coast Guard for authorization to take small numbers of marine mammals incidental to conducting construction activities related to maintenance and repair of eight of their facilities in Alaska over the course of five years from the date of issuance. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the U.S. Coast Guard's request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on the application and request.

**DATES:** Comments and information must be received no later than *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

**ADDRESSES:** Comments on the applications should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Electronic comments should be sent to [ITP.Meadows@noaa.gov](mailto:ITP.Meadows@noaa.gov).

*Instructions:* NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period.

Comments, including all attachments, must not exceed a 25-megabyte file size.

Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-cooconstruction-activities> without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Dr. Dwayne Meadows, Office of Protected Resources, NMFS, (301) 427-8401. An electronic copy of the U.S. Coast Guard's application may be obtained online at:

<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-cooconstruction-activities>. In case of problems accessing these documents, please call the contact listed above.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An incidental take authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where

relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

### **Summary of Request**

On March 15, 2021, NMFS received an application from the U.S. Coast Guard (Coast Guard) requesting authorization for take of marine mammals incidental to maintenance and repair of eight of their facilities in Alaska. After the applicant responded to our questions, we determined the application was adequate and complete on November 17, 2021. The requested regulations would be valid for 5 years, from April 1, 2022 through March 31, 2027. The Coast Guard plans to conduct necessary work, including impact and vibratory pile driving and removal, making holes using down-the-hole equipment, pile cutting and power washing to maintain and repair their dock and other facilities. The proposed action may incidentally expose marine mammals occurring in the vicinity to elevated levels of underwater sound, thereby resulting in incidental take, by

Level A and/or Level B harassment only. Therefore, the Coast Guard requests authorization to incidentally take marine mammals.

### **Specified Activities**

The Coast Guard proposes to conduct construction necessary for maintenance and repair of existing in-water structures at the following eight Coast Guard station facilities in Alaska: Kodiak, Sitka, Ketchikan, Valdez, Cordova, Juneau, Petersburg, and Seward. Up to 246 piles will be removed and replaced on a 1 to 1 basis over the 5-year regulations. The Coast Guard anticipates a maximum of 395 work days over the course of the 5-year period and they expect to take 23 stocks from 12 species of marine mammals.

### **Information Solicited**

Interested persons may submit information, suggestions, and comments concerning the Coast Guard's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by the Coast Guard, if appropriate.

Dated: November 18, 2021.

**Kimberly Damon-Randall,**

*Director, Office of Protected Resources,*

*National Marine Fisheries Service.*

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